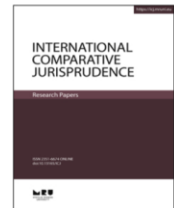




## International Comparative Jurisprudence



### RESTRICTIONS ON THE PARTICIPATION OF DEBTOR-RELATED CREDITORS IN BANKRUPTCY PROCEEDINGS: IS THERE A NEED FOR A NEW APPROACH IN ESTONIAN LAW?

Mari Schihalejev <sup>1</sup>

*University of Tartu, School of Law, Estonia*  
*E-mail: mari.schihalejev@ut.ee*

*Received: 26 March 2018; accepted: 26 April 2018*

*DOI: <http://dx.doi.org/10.13165/j.icj.2018.06.006>*

**Abstract.** In bankruptcy proceedings, creditors have three main active procedural rights: 1) to submit a proof of claim; 2) to vote at a general meeting of creditors; 3) to satisfy the claim. However, some countries have adopted regulations that specify which creditors are allowed to participate in the proceedings. Such creditors are debtor-related persons, especially shareholders with subordinated loan claims. The Estonian Bankruptcy Act does not provide any regulations governing the participation of debtor-related creditors in the proceedings. Therefore, debtor-related creditors could control the bankruptcy proceedings and the activities of the trustee during a bankruptcy, which harms the rights and interests of non-related creditors. The article aims to find answers to the questions: Should the law provide restrictions on the participation of the debtor-related creditors in bankruptcy proceedings in order to ensure the protection of the parties' rights and interests, and should shareholders have a right to active participation in bankruptcy proceedings with a subordinated loan claim? This article attempts to find answers to these questions by comparing Estonian, German, Latvian and Lithuanian law.

**Keywords:** debtor-related creditors, bankruptcy, subordinated loan, determination of the number of votes, ranking of claims

#### Introduction

Bankruptcy proceedings are collective procedures for creditors, in which the equal treatment of creditors is a guiding principle (Varul, 2008, p. 362). In a collective proceeding, creditors with similar rights must be treated equally (UNCITRAL, 2005, p. 11). The objective of bankruptcy proceedings is to put equal creditors in an equal position to ensure the protection of their rights and interests. The purpose of bankruptcy proceedings is to determine all of the creditors' claims and satisfy them in proportion out of the assets of the debtor. This applies to the situation where the debtor is unable to satisfy all the claims (Varul, 1993a, p. 6; Varul, 1994a, p. 2; Varul, 1993b, p. 30). Creditors have three principal rights in the proceedings: 1) to submit a proof of claim; 2) to vote at a general meeting of creditors, taking important decisions that influence the course of the proceedings; 3) to satisfy the claim.

Nevertheless, not all creditors can be treated equally (UNCITRAL, 2005, p. 11); in some cases it is justified to deviate from the principle of equal treatment. It is common that some creditors (e.g. pledgees) are given priority over all other creditors. However, deviations from the principle of equal treatment may not only mean increasing someone's rights, but also restricting them. Debtor-related persons are put at a disadvantage in comparison with other creditors. The aim of this is to protect the rights of all creditors. Deviations from the principle of equal treatment are due to various historical, political and pragmatic factors. There are also a number of divergent objectives, such as ensuring legal certainty, in particular the principle of the protection of legitimate expectations, ensuring the profitability of the debtor's activities, protecting workers, and protecting the principle of contractual

---

<sup>1</sup> Junior Research Fellow in Civil Law, University of Tartu, School of Law.

freedom (Kasak, 2010, p. 16). Therefore, some countries have adopted regulations that specify which creditors are allowed to file their claims, vote, and obtain the satisfaction of a claim. Restrictions are imposed on such creditors who are debtor-related persons, especially shareholders with subordinated loan claims.

The participation of debtor-related creditors in bankruptcy proceedings can cause a number of problems if the law does not provide any restrictions. Firstly, it is easy for debtor-related persons to falsify claims and documents in order to participate in the proceedings. Secondly, shareholders as debtor-related creditors may file a claim based on loans given to a company in a situation where equity investment has been insufficient; such a loan may be a subordinated loan. However, a subordinated loan claim should usually be defined as a loan that is repayable when the claims of all other creditors have been covered (Vutt, 2008, p. 87). Thirdly, by filing the proof of claim, debtor-related creditors have an opportunity to control the bankruptcy proceedings and the activities of the trustee during a bankruptcy, which harms the rights and interests of non-related creditors. Therefore, debtor-related creditors and shareholders-lenders are “closer to the business”, which should be sufficient to make them bear a higher risk than non-related creditors (Verse, 2008, p. 1116). Nevertheless, there are arguments against imposing the restrictions: shareholders might not take any entrepreneurial risks, and shareholders might exploit their insider status in order to recover their loan in full when the company is approaching insolvency. On the other hand, in cases that do not involve subordinated loan claims, the claim might be based on a normal transaction, which can be proved, so the participation of debtor-related creditors might be justified.

The Estonian Bankruptcy Act (BA, 2004) does not provide any regulations governing the participation of debtor-related creditors in bankruptcy proceedings. However, it is necessary to differentiate between passive and active participation in the proceedings. Every person entitled to vote is entitled to participate in the creditors’ meeting. Nevertheless, not everyone who is entitled to participate has the right to vote (Nerlich & Römermann, 2017, Article 77 Rn. 1). Moreover, creditors’ claims should be covered in different rankings. Hence, it is necessary to determine whether debtor-related persons should have the right of active participation in bankruptcy proceedings.

Under current Estonian bankruptcy law, debtor-related persons have extensive rights in the proceedings: they can file a claim, which in turn gives them the right to vote at the general meeting of creditors and the right for the satisfaction of the claim. This leads to a situation where non-related creditors rarely participate in the general meetings of creditors. The reason for this may be that creditors do not have sufficient legal certainty to participate in the proceedings, for debtor-related persons submit their claims, and obtain the right to vote as well as to participate in making decisions concerning the process of the proceedings and the activities of the trustee. Creditors usually do not have any additional funds available to hold court actions in respect of the determination of the votes or the acceptance of the claims. Furthermore, if all proving documents of the claim are submitted, which, however, may be ostensible or be based on the claims of the subordinated loan, there is no reason for court actions, because the law does not restrict the participation of debtor-related persons in bankruptcy proceedings.

The Estonian Ministry of Justice has drawn attention to the need to regulate subordinated loans in 2016. In the insolvency revision project it was noted that regulating subordinated loans should be considered and the ranking of claims should be reviewed. In “Terms of reference for the revision of company law” it was also noted that the concept of a subordinated loan in Estonian commercial and bankruptcy law needs to be analysed. Moreover, the analysis of the concept and the proposed changes must be based on the need for a balanced protection of the rights of creditors and shareholders.

Several international organisations have also given instructions on the participation of debtor-related persons. In 2010, an INSOL Europe panel of experts prepared a report titled “Harmonisation of Insolvency Law at EU Level”, which listed problems that occur in the absence of common rules on insolvency. One of the problems was the ranking of creditors. According to the report, there are different rankings of creditors in each EU Member State, which might reduce the predictability of the outcome for the creditors. It was also stated that there are substantial and structural differences in the roles of the management board in insolvency proceedings in different EU Member States. However, the experts were of the opinion that it is not advisable to attempt to harmonize these rules until

there is greater harmony in the underlying processes (INSOL Europe, 2010). Furthermore, UNCITRAL has recommended that subordinated claims would rank after claims of other unsecured creditors (UNCITRAL, 2005, 275-276). In addition, the Cork Committee stated that English law is flawed, because it does not have a rule on the subordination of shareholder loans (de Weijs, 2011, p. 237).

Many countries (e.g. USA, Italy and Spain) have a regulation governing the participation of debtor-related persons in bankruptcy proceedings (Verse, 2008, p. 1111). For example Germany, Australia and USA follow the so-called “absolute priority rule” by prescribing that creditors’ claims must be paid in full in insolvency proceedings before equity holders are entitled to sell their shares during insolvency. Furthermore, it is often specified that shareholders are obligated to pay money into the bankruptcy estate that they committed to pay on the subscription of shares and which was not yet paid at the time the insolvency became evident (Sarra, 2007, p. 186).

The present article aims to find answers to the following questions: Should the law provide restrictions on the participation of debtor-related creditors in bankruptcy proceedings in order to ensure the protection of the parties’ rights and interests, and should shareholders have a right to active participation in bankruptcy proceedings with a subordinated loan claim?

## **1. Current law and case law on debtor-related creditors’ participation in Estonian bankruptcy proceedings**

### **1.1. Current law on debtor-related creditors’ participation in Estonian bankruptcy proceedings**

A number of countries (e.g. Germany) that have a long-standing tradition of bankruptcy proceedings have imposed regulations on the participation of debtor-related persons in bankruptcy proceedings. However, Estonian bankruptcy law does not provide any such regulations. In fact, many articles give general opinions on Estonian bankruptcy law: explanatory notes (Varul, 1993a; Varul, 1993c; Varul, 1994), general issues (Varul, 1999b), proposals for amendments (Varul, 2008), and the development of insolvency law (Varul, 1999a; Varul, 2013). However, none of the articles is concerned with the issues of the participation of debtor-related creditors in bankruptcy proceedings. Some articles merely mention that there are problems with determining the number of votes before defending the claims (Varul, 1993c, p. 52; Varul, 1994, p. 6). A general description of the reduction of preferred claims can also be found (Varul, 1994; Varul, 2004, p. 102), but no one has published a thorough analysis of and introduced amendments to the law on the participation of debtor-related persons in bankruptcy proceedings.

Moreover, the BA only explains and mainly uses the term “debtor-related persons” in the context of the recovery of transactions (Article 117 of the BA). It provides a list of debtor-related persons, which, however, is not exhaustive: according to subsection 3, a court may consider a person close to a debtor but not specified in this section to be connected with the debtor. Therefore, the term “debtor-related persons” cannot be found in the contexts of submitting the claims, determining the number of votes and satisfying the claims.

Article 93 (1) of the BA describes the submission of claims and simply provides that creditors are required to notify the trustee of all their claims against the debtor which arose before the declaration of bankruptcy, regardless of the basis or the due dates for fulfilment of the claims. Therefore, claims can be filed by all creditors. This means that shareholders can file their claims too, regardless of the basis and content of the claim, including subordinated loan claims.

Furthermore, Estonian law does not provide special regulations on voting in separate creditor groups at the general meetings of creditors. Article 81 (1) of the BA simply prescribes that the decisions of a general meeting of creditors are adopted by a simple majority of the votes of the creditors participating in the meeting, and the number of the votes of each creditor is proportional to the amount of the creditor’s claim (Article 82 (1) of the BA). Thus, all creditors vote in the same group. Moreover, debtor-related persons, including shareholders, can participate in and vote at the general meeting of creditors and make important decisions, which affect the proceedings.

Estonian bankruptcy law does not regulate the satisfaction of debtor-related claims, either. Article 153 of the BA only prescribes that the creditors' claims shall be satisfied in the following rankings: 1) accepted claims secured by a pledge, to the extent provided for in subsection (2) of this section; 2) other accepted claims which were filed within the specified term; 3) other claims which were not filed within the specified term but were accepted. Therefore, all creditors whose claims have been accepted by the trustee and other creditors have the right for the satisfaction of the claim; that includes shareholders who have filed the claim based on a subordinated loan.

Thus, debtor-related persons, including shareholders, have the right for active participation in bankruptcy proceedings. However, although the BA does not provide regulations on the participation and subordinated loan claims of debtor-related persons in bankruptcy proceedings, the law should at least regulate the right to vote and the satisfaction of the claim which is based on a subordinated loan.

## **1.2. Case law on debtor-related creditors' participation in Estonian bankruptcy proceedings**

As already noted, Estonian bankruptcy law does not regulate the participation of debtor-related persons in bankruptcy proceedings. Thus, no comprehensive case law documents can be cited. Moreover, there are no Supreme Court decisions on the participation of debtor-related persons in bankruptcy proceedings.

In spite of that, the author of this article describes some cases involving debtor-related creditors' participation in Estonian bankruptcy proceedings. The present article is not a comprehensive collection of Estonian case law. Instead, such cases will be cited which demonstrate the main problems and describe the decisions made by trustees in Estonian bankruptcy proceedings. The objective of presenting the cases is to indicate that debtor-related persons have the right to file their claim. As a result, they can have the right to vote (Article 82 of the BA) and the right to satisfy their claim in the same ranking as other creditors (Article 153 (1) p 2 of the BA). However, the filed claim might be a subordinated loan claim by nature. Moreover, the cases demonstrate that debtor-related persons might have a majority of the number of votes in bankruptcy proceedings. Therefore, they may be able to control the progress of the proceedings and the activities of the trustee.

The first case involves the determination of the votes of debtor-related creditors at the first general meeting of creditors. In civil case 2-13-32716, debtor O was declared bankrupt. As other creditors, debtor-related creditor B submitted their claim in the proceedings. The trustee determined the number of votes to the creditors at the first general meeting of creditors. However, the trustee did not determine the votes to debtor-related creditor B, because the proof of claim was not proved according to Article 94 of the BA. Creditor B did not agree with the trustee; thus, the number of votes was determined by a ruling of the judge (Article 82 (4) of the BA). The court did not determine the votes to creditor B either and noted that the proof of claim did not correspond to the requirements of Article 94 of the BA. The court also claimed that it would be reasonable to apply increased requirements for the verification and justification of the claim to transactions with debtor-related creditors and to transactions of which both parties are one and the same person. However, the BA does not prescribe that increased requirements should be applied to debtor-related creditors. Therefore, the court's ruling was inexplicable. According to Article 55 (1) of the BA, the trustee should defend the rights and interests of all creditors and of the debtor, and ensure a lawful, prompt and financially reasonable bankruptcy procedure. If the BA provided clear rules on the participation of debtor-related creditors in the proceedings, similar cases could be avoided, and the creditors' rights and interests could be protected.

In civil case 2-07-40620, there was a dispute over the ranking of a shareholder's claim. Debtor R was declared bankrupt by the ruling of Harju County Court. The debtor had a shareholder, W, who filed their claim into the bankruptcy proceedings. Claims were defended at the general meeting of creditors pursuant to Article 100 (1) of the BA. The trustee determined that shareholder W's claim belongs to the IV ranking of the satisfaction of the claims in the proceedings. However, according to Article 153 (1) of the BA, there are only three rankings. Subsequently, the trustee submitted a distribution proposal to the court. Harju County Court did not approve the distribution proposal and returned it to the trustee. The court found that since there are three rankings of claims

according to the current BA and the data on the ownership of the debtor in the distribution proposal was in conflict with the data in the Commercial Register, the distribution proposal did not comply with the requirements laid down in the BA. The bankruptcy trustee filed an appeal to Tallinn Circuit Court on the basis of Article 157 (1) of the Commercial Code (the CC, 1995)<sup>2</sup>. The trustee was of the opinion that the BA does not prescribe numbering the claims, but it has been recognized in practice. The bankruptcy trustee stated that as had been noted in the distribution proposal, the claim of shareholder W was to be satisfied after all the claims of other creditors. Therefore, the distribution proposal regarding the order in which to satisfy W's claim is sufficiently clear. The Tallinn Circuit Court annulled the county court's ruling and sent it to the county court for a new hearing. The circuit court found that it was incorrect to assign the IV ranking to the shareholder's claim. However, the court agreed that the numbering of the ranking of claims is not prescribed in the BA and it was correct to only satisfy the shareholder's claim after satisfying all the other claims. Despite the opinion of the circuit court, Article 153 (1) of the BA provides only three rankings of claims. Therefore, the shareholders' claims must be accepted in the same way as other creditors' claims, which are filed within the specified term (Article 153 (1) p. 2–3 of the BA).

Other cases describe the acceptance of debtor-related claims according to Article 153 (2) of the BA. In civil case 2-15-15226, debtor M was declared bankrupt. Debtor M had three shareholders: T, A and R. U and R were members of the management board. Shareholder T had 33.33% of the debtor's share capital. U was a member of the management board of debtor M and of shareholder T. Shareholder T submitted two proofs of claim into the bankruptcy proceedings. The first claim was partially based on a loan claim and partially based on an acquired claim from other creditors. The second claim was also based on an acquired claim. Furthermore, member of the management board U filed the third claim from their third company P, which was also based on an acquired claim from another creditor. According to Article 103 (2) of the BA, the trustee and other creditors accepted all three claims, which were connected with the debtor. Hence, debtor-related creditors held 65% of the total claims in the bankruptcy proceedings. They also had the majority of the votes. Therefore, the debtor-related creditors gained full control over the proceedings, because there is no provision in the BA that restricts the participation rights of debtor-related creditors.

Civil case 2-14-61665 demonstrates a similar practice. Debtor L was declared bankrupt. L's shareholder was J and V was a member of the management board of the debtor and of the shareholder. V submitted a proof of a claim into the bankruptcy proceedings. The claim was based on a fact that V had paid various bills and taxes on behalf of debtor L. Therefore, the claim was, by its nature, a subordinated loan claim. Furthermore, company Q, where V was also a member of the board, submitted a second claim. This claim was acquired from a Chinese company that supposedly provided consultancy services in relation to the identification of various marketing opportunities for the products. The third claim was submitted by a non-related creditor, but it was assigned to debtor-related creditor W. Since that bankruptcy estate was not sufficient for making the payments necessary for covering the consolidated obligations and the costs of the bankruptcy proceedings, the proceeding was abated (Article 158 of the BA). A meeting for the defence of claims was not held, but debtor-related persons could have obtained 100% of all claims. Therefore, the debtor-related creditors could have gained control of the bankruptcy proceedings and of the activities of the trustee. All decisions would have been made in favour of the debtor-related persons. If the claim of the non-related creditor had not have been assigned and they could have made decisions in the proceedings, the proceedings might not have been abated, either. However, in this case, the debtor-related creditors were able to ensure that a claim for compensation for damages, an act with criminal elements, a grave error in management, or other circumstances could not be determined.

In civil case 2-15-19333, debtor W was declared bankrupt. Debtor W had three shareholders: S, T and J. The only member of the management board was J, who submitted a claim into the bankruptcy proceedings. The claim was based on a loan. Moreover, the loan contract was signed by J. The signatures were handwritten; thus, the date of signing was not clear and the trustee suspected that the contract was fictitious. Therefore, the trustee did not accept the claim in the bankruptcy proceedings, stating that the circumstances were not proved according to Article 94 of

---

<sup>2</sup> Commercial Code, passed 15.02.1995, entry into force 01.09.1995. Available in English at <https://www.riigiteataja.ee/en/eli/519122017001/consolide>.

the BA (an action for the acceptance of the claim has not been filed in the court). Other objections would not have been justified, because there is no regulation stating that debtor-related persons cannot submit the claim into bankruptcy proceedings. Furthermore, if the claim had been accepted, debtor-related creditors would not have had the majority of the votes, but they still could have had an opportunity to influence the proceedings.

In civil case 2-16-7967, debtor-related persons submitted a claim based on a transaction besides loan claims. Debtor N was declared bankrupt. Debtor N had three shareholders: L, T and F. L and T both had 33.33% of the debtor's share capital. Both L and T also submitted proofs of claims based on a loan claim into the bankruptcy proceedings. Documents proved that debtor N paid their bills with the loan given by shareholders L and T. The trustee and other creditors accepted these claims in the proceedings. However, M – former member of the management board and former shareholder of the debtor – also submitted their claim from their company G (M was a member of the management board until 25.10.2013 and a shareholder until 25.05.2015, but the bankruptcy was declared on 27.06.2016). This claim was based on a contract of sale and on the request to compensate for damages, as debtor N no longer purchased goods from company G. The trustee and other creditors (debtor-related creditors as shareholders L and T) did not accept that claim, stating that the circumstances were not proved according to Article 94 of the BA (an action for the acceptance of the claim has been filed in the court). Debtor-related persons held 62% of the total claims; however, the accepted debtor-related claims accounted for 43% of the total claims in the bankruptcy proceedings. The trustee accepted such loan claims as subordinated loan claims because of their nature, but did not accept the claim based on an ordinary transaction. One reason for this may be that the BA does not state that shareholders with subordinated loan claims cannot participate in the proceedings. Another reason may be that the lack of relevant provisions led to a situation where shareholders L and T could have controlled the bankruptcy proceedings and influenced the activities of the trustee. L and T ensured that the claim of the former member of the management board and of the former shareholder was subject to an objection, even though it was based on an ordinary transaction.

Civil case 2-13-17637 is different from the cases described above. This case pertains to a claim for compensation for damages that were responsible for an uncompleted stock transaction. Debtor F was declared bankrupt. Debtor F had a shareholder R, who was also the only member of the management board. Creditor K submitted a claim into the bankruptcy proceedings. K was a debtor-related person: they were connected with R in many other companies. The claim was based on a claim for compensation for damages that occurred because of an uncompleted stock transaction. The only proof of that was a confirmation notice from R. The trustee and other creditors filed an objection to the claim, stating that the circumstances were not proved according to Article 94 of the BA. Debtor-related creditor K filed an action with the court. Nevertheless, all parties reached a compromise, according to which debtor-related creditor K waived the entire claim. The second claim was filed from company L, which was bankrupt. However, the members of its management board and its shareholders were connected with debtor F. The claim was based on a sales contract. The trustee and debtor-related creditor K filed an objection, and an action for the acceptance of the claim was filed with the court. All parties reached a compromise again, according to which the claim was partly accepted. This raises the question of whether claims based on uncompleted stock transactions belong to the claims of debtor-related persons, although in this case, the creditor was connected with the debtor.

Another question is that even if there are no provisions in Estonian legislation on the participation of debtor-related persons in insolvency proceedings, is it in accordance with the principle of good faith that debtor-related creditors can make decisions which have a significant effect on the proceedings as well as may harm the rights and interests of non-related creditors.

The Harju County Court has processed a case involving a situation where debtor-related creditors participated in the voting process of the compromise proposal. In civil case 2-04-2165, Harju County Court adjudicated on a compromise proposal made during the course of bankruptcy proceedings (Article 183 of the BA). Debtor-related creditors voted for the compromise proposal according to Article 180 (3) of the BA. Thus, the compromise decision was largely based on the votes of the creditors connected with the debtor and of other creditors who were dependent on the debtor. Upon resolving the compromise proposal, the court found that the decision to approve the

compromise was contrary to the principle of good faith. The reason for it was the fact that the decision was made by debtor-related creditors whose claims were acquired by assignment. The court stated that the compromise is void if the decision was made with such creditors' votes. Due to the ruling of the county court, decisions on matters of decisive importance cannot be made primarily with the votes of debtor-related creditors. This is in conflict with the principle of good faith and would damage the interests of non-related creditors. If debtor-related creditors have a majority of the votes, other creditors will not, in essence, have an opportunity to influence the decision in order to meet their interests. A question then arises as to whether such a court ruling is legitimate. According to Article 183 (2) of the BA, a court shall not approve a compromise if the compromise has been made in violation of the requirements provided for in the BA or by fraud. The BA does not provide any regulations restricting the participation of debtor-related creditors in the voting process. Therefore, the court cannot refuse to approve such compromises which are adopted by the votes of debtor-related creditors. On the other hand, Article 430 (3) of the Code of Civil Procedure (CCP, 2006)<sup>3</sup> provides that the court shall refuse to approve a compromise if this is contrary to good morals or the law, if this violates a significant public interest or if the conditions of the compromise cannot be enforced. Furthermore, according to Article 200 (1) of the CCP, a participant in a proceeding is required to exercise the procedural rights in good faith, and according to Article 200 (2), a court does not allow the participants in a proceeding, their representatives or advisers to abuse their rights. However, because of the lack of restrictions on debtor-related persons' participation in bankruptcy proceedings, all decisions made by debtor-related creditors must be accepted pursuant to the current bankruptcy law.

In accordance with the current law, trustees are forced to accept all claims from debtor-related persons if the proving documents are filed. In all the described cases, debtor-related persons whose claim was accepted by the trustee and other creditors had the right to vote and the right to satisfy their claim. Therefore, if they had a majority of the votes, they could control the proceedings. Even if they did not have an overwhelming majority of the votes, their vote might have been decisive. In current Estonian practice, non-related creditors often do not participate in general meetings, but debtor-related persons do. Thus, debtor-related persons can still make decisions on important issues, and control the progress of the proceedings and the activities of the bankruptcy trustee.

Moreover, the cases described above demonstrate that the practice of the trustees is not uniform. Sometimes an objection to a claim of debtor-related persons is filed and at other times it is not, regardless of whether the claim is based on a subordinated loan. Regrettably, the rights and interests of non-related creditors are not always taken into account in practice. Therefore, it may be stated that the lack of regulations on the participation of debtor-related persons has led to the situation where the objection to the claim of a debtor-related creditor depends on who has control over the process of the proceedings: the debtor or the creditors. In the case of bankruptcy proceedings, the legislator should consider restricting the voting rights of debtor-related persons and the satisfaction of their claims to ensure the protection of the rights and interests of other creditors, including non-related creditors. This would lead to a more uniform practice as well as ensure that creditors have legitimate expectation and legal certainty that debtor-related persons cannot control the bankruptcy proceedings.

## **2. Statutory law on debtor-related creditors' participation in bankruptcy proceedings in other countries**

### **2.1. Countries that have a regulation on the determination of the number of votes**

The legislation of many countries' contain regulations pertaining to the participation of debtor-related persons. For example, such regulations can be found in German, Latvian and Lithuanian bankruptcy law. Some countries (e.g. Germany) regulate both the right to vote and the right to satisfy the claim, whereas others (Latvia, Lithuania) only regulate the right to vote.

---

<sup>3</sup> Code of Civil Procedure, passed 20.04.2005, entry into force 01.01.2006. Available in English at <https://www.riigiteataja.ee/en/eli/506022018001/consolide>.



German insolvency law regulates the participation of debtor-related persons in bankruptcy proceedings, and there are regulations on the right to vote as well as on the right to satisfy the claim. Article 77 of the German Insolvency Statute (Insolvenzordnung) (InsO) specifies which creditors have the right to vote (Braun, 2017, Article 77 Rn. 1). InsO Article 77 (1) prescribes that lower-ranking creditors shall have no voting rights. This means that insolvency creditors are entitled to vote in accordance with Article 38, but subordinate creditors are not (Article 77 (1) p. 2, Article 39) (BeckOK InsO/Karg, 2017, InsO Article 77 Rn. 1). The reason for this is the lack of economic value (Schmidt, 2016, Article 77 Rn. 1–5). Moreover, as shareholders are at the bottom of the hierarchy of claims in bankruptcy proceedings, they should not be given a vote in the proceedings (Sarrazin, 2007, p. 198).

It can be said that German law has a rich history of the subordination of shareholder loans (de Weijers, 2011, p. 237). InsO Article 39 (1) specifies who are lower-ranking creditors and which claims are considered subordinated. According to Article 39 (1) p 5, subordinated claims are, for example, general claims for the repayment of shareholder loans. The law prescribes an automatic subordination of loans provided by shareholders who own more than 10% of the shares or who are members of the debtors' management bodies. Exceptions to this are claims of a shareholder who holds 10% or less of the company's registered capital, unless the shareholder is a managing director (1), or if a creditor acquired shares of the company for restructuring purposes after the company has become illiquid or over-indebted (2). The rationale of the first exception is that the shareholder must have significant influence on the management of the company. It can be said that this provision protects the rights of shareholders who hold a small number of shares. The second exception is for outside investors and serves as an incentive for rescue attempts (Verse, 2008, p. 1113).

Therefore, the question is whether a creditor is permitted to participate in the vote at all (BGH NZI 2009, 106 para. 9) or whether there is an extraordinary reason for exclusion, e.g. in the case of conflicts of interest, in-house transactions or in the case of decisions against himself (LG Hamburg NZI 2015, 28 Rn 20, AG Iztahoe NZI 2014, 1006 marginal 17, AG Kaiserslautern NZI 2006, 47). In these types of situations, the decision of whether a person or entity has the right to participate will be determined case-by-case by a discretionary decision (BeckOK InsO/Karg, 2017, InsO Article 77 Rn. 1).

However, creditors who are only subordinated to the remaining insolvency claims in the proceedings (Article 39) and therefore do not regularly represent any economic value, may participate in the meeting and thus be able to inform themselves of the progress of the proceedings, but have no voting rights. The situation is different when they act as representatives of the persons who are entitled to vote. In this case, they are given the right to vote by the person they represent (Kirchhof, Eidenmüller & Stürner, 2013, Article 77 Rn. 2–6).

Latvian insolvency law only regulates the voting rights of interested persons; there are no regulations on the satisfaction of the claims of debtor-related persons. The law prescribes that such creditors who are regarded as interested persons cannot vote at the creditors' meeting. According to Article 87 (5) of the Latvian Insolvency Law (2010), creditors who are recognized as interested persons in accordance with Article 72 and persons who have acquired the right to make a claim against the debtor from interested persons within one year prior to the proclamation of the insolvency proceedings of a legal person, shall not have the right to vote at the creditors' meeting.

Similar to the Estonian BA (Article 117), Latvian insolvency law specifies who are to be recognized as interested persons in relation to a debtor. According to Article 72 (2) of the Latvian Insolvency Law, persons are recognized as interested persons in relation to a debtor if they have been in this status for the preceding five years prior to the day of the proclamation of the insolvency proceedings of the debtor. According to Article 72 (1), interested persons are the participants (shareholders) of a debtor or members of a partnership, members of an administrative body, a proctor or person with a the commercial power of attorney, a person who is married to, is related to, or has an affinity to the second degree with the founder, a participant (shareholder) of the debtor, a member of a partnership or member of an administrative body, including a creditor who is in one group of companies with the debtor.



Lithuanian bankruptcy law only regulates the voting rights. Article 22 (6) of the Lithuanian Enterprise Bankruptcy Law (2001) prescribes that the owner (owners) of the enterprise in bankruptcy and bankrupt enterprise or an authorized representative thereof, including an administrator or authorised representative of the municipality wherein the immovable property of the enterprise in bankruptcy and the bankrupt enterprise is located, shall have the right to attend the meetings of creditors. However, only creditors shall be entitled to vote.

In the light of the examples provided concerning the bankruptcy laws of other countries given above, Estonian law is rather atypical, as it does not provide regulations on the participation of debtor-related persons in bankruptcy proceedings, especially on the right to vote. Therefore, regulations involving Estonian bankruptcy proceedings should be amended on the basis of other countries' legislation as described above.

## **2.2. Countries that have a regulation on the ranking of claims**

Some of the above-mentioned countries who regulate the voting rights of debtor-related persons do not regulate the right to satisfy their claim. This is seen, for example, in Latvian and Lithuanian bankruptcy law. However, German bankruptcy law provides regulations on the ranking of debtor-related creditors' claims.

Article 39 (1) of the German InsO prescribes that the subordinated loan claims of lower-ranking creditors can only be satisfied in bankruptcy proceedings if all the claims of all other insolvency creditors have been fully paid. However, the law was changed in the context of fundamental changes concerning share capital (Andres, Leithaus & Dahl, 2014, Article 39 Rn. 1–15) and shareholder loans were the most important issue of the whole GmbH reform (Verse, 2008, p. 1110). On the other hand, Article 39 of the InsO is purely procedural (BGH WM 1987, 584) and prescribes that certain types of insolvency claims are only to be settled after the full satisfaction of the claims of all other insolvency creditors (BeckOK InsO/Prosteder/Dachner, 2017, InsO Article 39 Rn. 1–6). Therefore, subordinated creditors can only expect their claims to be satisfied in exceptional cases (Braun, 2017, Article 174 Rn. 34–35). Holders of such claims are not expected to receive any satisfaction on a regular basis (Nerlich & Römermann, 2017, Article 174 Rn. 24–30).

Moreover, according to Article 174 (3) of the InsO, lower-ranking creditors shall only file their claims if they are specifically requested by the insolvency court to do so. Upon the filing of such claims, their lower-ranking status shall be indicated, and the creditor's lower rank shall be designated. According to Article 173 (3) sentence 1 of the InsO, subordinated insolvency claims (based on Article 39) are only to be registered after a special request by the insolvency court. The insolvency court will only issue this request in rare cases in which a distribution to the subordinate creditors is seriously considered (according to the reports of the insolvency administrator (if any, provisional)) (cf KPB / Pape / 82). This can take place either during the opening decision or later. A subsequent request will be made public and transmitted directly to the known subordinated creditors (BeckOK InsO/Zenker, 2017, InsO Article 174 Rn. 31–32).

In practice, except in the case of an insolvency plan, the German court will not make a request for notification as long as there are sufficient funds for at least a partial satisfaction of the subordinate creditors' claims – this might also apply in the residual debt-exemption procedure (Braun, 2017, Article 174 Rn. 34–35). This is only to be considered when it is foreseeable that there is not only enough money to enable the complete satisfaction of non-subordinated insolvency claims, but also to provide for the payment of subordinated insolvency claims (Kirchhof, Eidenmüller & Stürner, 2013, Article 174 Rn. 19–20). If the court has given the special request and proofs of claims are filed, the creditors must then register (InsO Article 174 (3) sentence 1) in order to gain their status as a party to the proceedings and the possibility of rescission. Article 174 (3) of the InsO also means that the insolvency creditor is not allowed to register their subordinate claim for the time being, their application filed without effect remains void, and the insolvency creditor is not a party to the insolvency proceedings (Nerlich & Römermann, 2017, Article 174 Rn. 24–30). If the creditor notifies their claim in the sense of Article 39 as a non-subordinated claim, the insolvency administrator must include it in the table (Article 175, No. 11). The table is divided into two sections.

The demands of Article 38 are entered into the first section and the demands of Article 39 (Article 175, No. 6) are put into the second section. The administrator and insolvency creditor can then object to the application at the verification meeting (Uhlenbruck, Hirte & Vallender, 2015, Article 174 Rn. 51–55).

Article 73 (4) p 5 of the Latvian Insolvency Law prescribes that in the submission of the creditors' claims against a debtor, it must be indicated as to whether the creditor is recognized as an interested person within the meaning of Article 72. However, the Latvian Insolvency Law does not differentiate between claims submitted by interested persons and other claims. According to Article 77, the administrator divides the submitted claims of creditors into two groups: 1) claims of secured creditors, and 2) claims of non-secured creditors.

The Lithuanian Enterprise Bankruptcy Law does also not provide any special rules on the satisfaction of debtor-related persons' claims or subordinated claims.

Although Latvian and Lithuanian bankruptcy laws do not prescribe any rules on the right to satisfy the claims of debtor-related creditors, the participation of debtor-related persons is still somewhat restricted and they are unable to control the entire process of the bankruptcy proceedings. Estonian bankruptcy law, however, does not regulate the participation of debtor-related persons in any way. Therefore, Estonian bankruptcy law should be amended. The law should provide that debtor-related creditors, especially in the case of subordinated claims, cannot have the right to vote in bankruptcy proceedings. Furthermore, debtor-related persons should not have the right for the satisfaction of a claim in the same ranking as other creditors. They should only have the right to satisfaction of their claim if all claims of all insolvency creditors have been fully paid.

### **3. Restrictions on the participation of debtor-related persons in bankruptcy proceedings**

Different countries have different methods for regulating the participation of debtor-related persons in bankruptcy proceedings. The main reason for this is that the participation of debtor-related persons may cause many problems in bankruptcy proceedings and harm other creditors. More specifically, the treatment of shareholder loans is a controversial issue in many jurisdictions. Legislators and courts have struggled to answer the question of whether loan claims from shareholders should be treated differently from loans from non-related creditors (Verse, 2008, p. 1109).

Firstly, debtor-related persons with voting rights may make decisions at the general meetings of creditors and thereby take control of the proceedings. Debtor-related persons, especially shareholders, exercise control over the debtor (de Weijs, 2011, p. 237). Moreover, a shareholder's one and only purpose is to make as much money as possible. Thus, the objective of debtor-related persons might be to take control of the proceedings and the bankruptcy estate ASAP under most favourable terms and conditions. Obtaining (the majority of the) votes at the first general meeting of creditors and electing suitable members to the bankruptcy committee generally means that the proceedings will benefit the debtors. However, this harms the rights and interests of non-related creditors.

Secondly, debtor-related persons may control the activities of the bankruptcy trustee. Debtor-related persons, especially shareholders, have an advantage over the creditors: information concerning the debtor's business activities (de Weijs, 2011, p. 237). They might have information on whether the insolvency has been caused by an act with criminal elements or a grave error in management. However, in proceedings controlled by the debtor, it is easier to ensure that the trustee does not establish that kind of information. In that case, the trustee could be influenced in order to avoid conducting an audit in accounting, which may reveal severe criminal elements or a grave error in management. Thus, no claims are filed against the debtor's management, which damages the creditors' as well as public interests. The creditors will not receive any money from the claims. In addition, the public will be sent a signal that the person who violated their obligations is not liable for their acts or inactivity. Debtor-related persons may also delay the proceedings, so the deadlines for the recovery procedures against the

persons concerned might be overrun (Schihalejev, 2013). This would also harm the rights and interests of non-related creditors.

As a result, if debtor-related persons have control over the proceedings and activities of the trustee, and are also entitled to the satisfaction of the claim, money can be taken out from the proceedings. However, a debtor-related person might be a shareholder with a subordinated loan claim, which, as mentioned above, should be payable after all the other creditors' claims have been covered. Nevertheless, the questions arise as to when is the cause of the debtor's insolvency an act with criminal elements or a grave error in management, and whether the shareholders should be victims of unfair treatment and not get the right to participate in the proceedings based on their subordinated loan claim. In that case, the management board has caused the insolvency of the company and the shareholder might not be responsible for that. Moreover, according to Article 187 (2) of the CC, the management board is responsible.

Shareholders should choose loyal and appropriate members of a company's management body. According to the CC, members of the management board are elected and removed by shareholders (Article 168 (1), Article 184 (1); or by the supervisory board (Article 309 (1)), who are, in turn, elected by the shareholders (Article 290 (1), Article 298 (1) p 4, Article 319 (1)). However, according to the CC, if a private or public limited company is insolvent and the insolvency is not temporary due to the company's economic situation, the management board shall promptly but not later than within twenty days after the date on which the insolvency became evident, submit the bankruptcy petition of the company to a court (Article 180 (51), Article 306 (31)). In the case of the insolvency of the company, the principle of liquidation or recapitalization applied as a capital maintenance measure is implemented in two steps: firstly, the management board is obliged to call a meeting upon the occurrence of insolvency (Article 171 (2) p 1, Article 292 (1) p 1), and secondly, the shareholders are obliged to make a decision which results in the recovery of the share capital in accordance with the requirements as provided by law (Article 176, Article 301) (Saare, Volens, Vutt & Vutt, 2015, pp. 281–282). Thus, shareholders must decide and are obligated to ensure that the share capital of the private or public limited company meets the set requirements. Therefore, it can be said that shareholders are responsible for the activities of the members of management bodies via elections, which means that shareholders should not be entitled to participate in bankruptcy proceedings upon the occurrence of an act with criminal elements or a grave error in management.

Moreover, shareholders have more rights than only proprietary interests: the right to participate in decision-making and have a vote on issues which play an important role in the company's business activities (Madaus, 2013, p. 111). However, if the company becomes insolvent, then as a general rule it no longer continues its business activities (except in the case of rehabilitating the enterprise, which is rare in Estonian practice). Thus, it is not necessary to give shareholders the right to vote, because they do not need to negotiate and have no opportunity to make decisions about the company's business activities. Usually the first general meeting of creditors decides whether to terminate the activities of the debtor's undertaking, and whether to terminate the debtor if the debtor is a legal person (Article 77 p 2–3 of the BA). However, in reorganization proceedings, the company continues its activities, so shareholders may need to make decisions and have a voting right, although in a separate group from other creditors (Schihalejev, 2014).

Nevertheless, there are arguments against restricting the participation of debtor-related creditors with subordinated loan claims. The main rationale of it is that the subordination of all shareholder loans will decrease the shareholders' participation in sharing the company's entrepreneurial risks. This, in turn, prevents shareholders from making any decisions that could harm the creditors' rights and interests. In addition, the bankruptcy petition may be filed in court on time when the insolvency appears. On the other hand, subordination may deter shareholders from granting any loans to a company in situations where loans would be used for projects that are ex ante efficient (Verse, 2008, p. 1115). However, business risks and investments are a natural part of economic activities. Shareholders are the owners of the residual value of the firm and the increase or decrease in their wealth is in direct correlation with the changes in the value of the company (Keay, 2015, p. 144). Shareholders have the right to decide on the amount of the capital they would invest in the company in order to maximize return and minimize the risk in their investment

choices. In the case of a financially successful business, investors can expect to seek return through dividends from profits and increases in the share price (Sarraf, 2007, p. 182). However, in the case of a financially unsuccessful business, shareholders could lose their investment, but risk-taking is a natural part of entrepreneurship.

Furthermore, shareholders might exploit their insider status in order to recover their loan in full. Shareholders are often the first to know if and when a company is approaching insolvency (Verse, 2008, p. 1116). Therefore, if there are regulations that restrict the rights of debtor-related persons to participate in the proceedings – which, in turn, means that shareholders know that it is not possible to recover the loan in bankruptcy proceedings, then shareholders might withdraw money from the company even before the bankruptcy petition is submitted to the court. In this case, it is possible to file an action for the recovery of transactions (Articles 109–110, Article 113 of the BA). This, however, requires financial resources from creditors.

On the other hand, in cases involving other debtor-related creditors' claims, which are not subordinated loan claims, and when the transactions are proven, the participation of debtor-related creditors might be justified. In Estonian practice, it is common for individuals to have several companies. Some transactions are concluded with related persons (e.g. sale contracts, contracts for the provision of certain services). Thus, the trustee and the courts should consider the true nature of the transaction made. The circumstances should be determined and it should be ascertained as to whether the claim can be proven or not. More specifically, it should be determined whether the true nature of the legal relationship is based on an investment or on a transaction on the basis of which a creditor is entitled to secure a sum of money (Sarraf, 2007, p. 198).

## Conclusions

The issue of restrictions on the participation of debtor-related creditors in bankruptcy proceedings has three main aspects: submitting a proof of claim, voting at a general meeting of creditors and satisfying the claim. In the case of having a majority of the votes, debtor-related creditors can make important decisions at the general meeting of creditors, which gives them the opportunity to control the proceedings and the activities of the trustee.

In the light of the examples from other countries' bankruptcy laws provided above, Estonian law is rather unique, as it does not provide regulations on the participation of debtor-related persons in bankruptcy proceedings. This means that all debtor-related persons can participate in bankruptcy proceedings. Shareholders can also file a claim based on a subordinated loan, vote and require a satisfaction of that claim, which, however, should be paid after all other creditors' claims are covered. Because of the lack of regulations, trustees in bankruptcy are forced to accept all claims from debtor-related persons if the proving documents are filed, and they must also accept subordinated loan claims. Furthermore, the lack of regulations on the participation of debtor-related persons has led to the situation where an objection to the claim of a debtor-related creditor depends on who has control over the process of the proceedings: the debtor or the creditors.

It is clear that Estonian bankruptcy law should impose certain restrictions on the participation of debtor-related persons in bankruptcy proceedings. The Estonian BA should provide that debtor-related persons, including shareholders, should not have the right to participate in bankruptcy proceedings: they should not have the right to vote and satisfy the claim before other creditors' claims have been covered. Such regulations would lead to a more uniform practice as well as ensure the protection of creditors' rights and interests. Creditors could then have legitimate expectations and legal certainty that debtor-related persons cannot control the bankruptcy proceedings. Moreover, shareholders are taking risks associated with the failure of the company. They should take account of ordinary business risks in making their investment decisions and cannot have legitimate expectations that all of the invested money can be covered in every aspect. However, in cases that do not involve subordinated loan claims where the transactions are proven and which relate to other debtor-related creditors' claims, the participation of debtor-related persons might be justified.

## References

- Andres, D., Leithaus, R., Dahl, M., (2014). *Insolvenzordnung (InsO). Kommentar* (3. Auflage). München: Verlag C. H. Beck München.
- Bankruptcy Act of the Republic of Estonia, passed 22.01.2003, entry into force 01.01.2004. Available in English at <<https://www.riigiteataja.ee/en/eli/516102017003/consolide>>.
- Braun, E., (2017). *Insolvenzordnung (InsO). Kommentar* (7. Auflage). München: Verlag C. H. Beck München.
- Code of Civil Procedure of the Republic of Estonia, passed 20.04.2005, entry into force 01.01.2006. Available in English at <<https://www.riigiteataja.ee/en/eli/506022018001/consolide>>.
- Commercial Code of the Republic of Estonia, passed 15.02.1995, entry into force 01.09.1995. Available in English at <<https://www.riigiteataja.ee/en/eli/519122017001/consolide>>.
- de Weijjs, R. J., (2011), Towards an Objective European Rule on Transaction Avoidance in Insolvencies. *International Insolvency Review*, (20), 219–244. DOI:10.1002/iir.196.
- Enterprise Bankruptcy Law of the Republic of Lithuania, 20 March 2001 – No IX-216. Available in English at: <<http://www.lithuanialaw.com/lithuanian-enterprise-bankruptcy-law-508>>.
- Fridgen, A., Geiwitz, A., Göpfert, B., (2017). *Beck'scher Online-Kommentar* (7. Ed.). München: Verlag C. H. Beck München.
- INSOL Europe. Harmonisation of Insolvency Law at EU Level. (2010). Available at <<https://www.insol-europe.org>>.
- Insolvency Law of the Republic of Latvia, adoption 26.07.2010, entry into force 01.11.2010. Available in English at <<https://likumi.lv/ta/en/en/id/214590-insolvency-law>>.
- Insolvency Statute of the Federal Republic of Germany, 05.10.2004, Federal Law Gazette I page 2866. Available in English at: <[https://www.gesetze-im-internet.de/englisch\\_inso/englisch\\_inso.html](https://www.gesetze-im-internet.de/englisch_inso/englisch_inso.html)>.
- Kasak, A., (2010). *Võlausaldajate võrdse kohtlemise põhimõttest kõrvalekaldumise pankrotimenetluses* (Deviations from the Principle of Equal Treatment of Creditors in Insolvency Proceedings). Master's thesis. Tartu.
- Keay, A., (2015). The Shifting of Directors' Duties in the Vicinity of Insolvency. *International Insolvency Review*, (24), 140–164. DOI: 10.1002/iir.1236.
- Kirchhof, H-P., Eidenmüller, H., Stürner, R., (2013). *Münchener Kommentar zur Insolvenzordnung* (3. Auflage). München: Verlag C. H. Beck München.
- Madaus, S., (2013). Reconsidering the Shareholder's Role in Corporate Reorganisations under Insolvency Law. *International Insolvency Review*, (22), 106–117. DOI:10.1002/iir.1209.
- Maksejõuetuse revisjoni lähteülesande projekt (Insolvency revision project). (2016). Available in Estonian at: <[https://www.just.ee/sites/www.just.ee/files/maksejõuetusoiguse\\_revisjoni\\_lahteulesanne\\_loplik\\_13.06.2016.pdf](https://www.just.ee/sites/www.just.ee/files/maksejõuetusoiguse_revisjoni_lahteulesanne_loplik_13.06.2016.pdf)>.
- Nerlich, J., Römmermann, V., (2017). *Insolvenzordnung (InsO). Kommentar* (32. EL). München: Verlag C. H. Beck München.
- Proofs of claims of creditors in Estonian bankruptcy proceedings. (2-14-61665).
- Proofs of claims of creditors and protocol of the meeting for the defence of claims in Estonian bankruptcy proceedings of 14 February 2014. (2-13-17637).
- Proofs of claims of creditors and protocol of the meeting for the defence of claims in Estonian bankruptcy proceedings of 31 March 2016. (2-15-15226).
- Proofs of claims of creditors and protocol of the meeting for the defence of claims in Estonian bankruptcy proceedings of 12 July 2016. (2-15-19333).
- Proofs of claims of creditors and protocol of the meeting for the defence of claims in Estonian bankruptcy proceedings of 17 October 2016. (2-16-7967).
- Ruling of Tallinn Circuit Court of 31 May 2011. (2-07-40620).
- Ruling of Harju County Court of 26 December 2006. (2-04-2165).
- Ruling of Harju County Court of 5 November 2013. (2-13-32716).
- Saare, K., Volens, U., Vutt, A., Vutt, M., (2015). *Ühinguõigus I*. Tallinn: Juura.
- Sarra, J., (2007). From subordination to parity: an international comparison of equity securities law claims in insolvency proceedings. *International Insolvency Review*. (16), 181–246. DOI:10.1002/iir.152.
- Schihalejev, M., (2013). *Hääle määramine ja selle kohtulik järelevalve maksejõuetusmenetluses* (Determination of Votes and Its Supervision Exercised by Courts in Insolvency Proceedings). Master's thesis. Tartu.
- Schihalejev, M., (2014). Formation of Creditor Groups in Reorganisation Proceedings: Does Estonia Need a Better Regulation? *Juridica International*, (21), 159–167.
- Schmidt, K., (2016). *Insolvenzordnung* (19. Auflage), München: Verlag C. H. Beck München.
- Uhlenbruck, W., Hirte, H., Vallender, H., (2015). *Insolvenzordnung. Kommentar* (14. Auflage). München: Verlag Franz Vahlen München.
- United Nations Commission on International Trade Law (UNCITRAL). (2005). *Legislative Guide on Insolvency Law*. Available at: <[http://www.uncitral.org/pdf/english/texts/insolven/05-80722\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf)>.
- Varul, P., (1993a). Selgitavaid märkusi pankrotiseadusele (Clarifying Remarks on the Law of Bankruptcy). *Juridica*, 1993 (1), 6–7.
- Varul, P., (1993b). Selgitavaid märkusi pankrotiseadusele (Explanatory Remarks on the Law of Bankruptcy (2)). *Juridica*, 1993 (2), 30–30.
- Varul, P., (1993c). Selgitavaid märkusi pankrotiseadusele (Explanatory Remarks on the Law of Bankruptcy). *Juridica*, 1993 (3), 52–52.
- Varul, P., (1994). Selgitavaid märkusi pankrotiseadusele (Explanatory Remarks on the Law of Bankruptcy). *Juridica*, 1994 (1), 2–13.
- Varul, P., (1999a). On the Development of Bankruptcy Law in Estonia. *Juridica International*, (IV), 172–178.
- Varul, P., (1999b). Pankrotiõiguse probleeme (Issues Concerning Bankruptcy Law). *Juridica*, 1999 (8), 376–380.

- Varul, P., (2004). Nõuetest pankrotimenetluses (Claims in Bankruptcy Proceedings). *Juridica*, 2004 (2), 96–102.
- Varul, P., (2008). Pankrotiseaduse uued parandusettepanekud (New Proposals for Amendments to the Bankruptcy Act). *Juridica*, 2008 (6), 359–368.
- Varul, P., (2013). Maksejõuetuse areng Eestis (Developments in Insolvency Law in Estonia). *Juridica*, 2013 (4), 234–241.
- Verse, D.A., (2008). Shareholder Loans in Corporate Insolvency – A New Approach to an Old Problem. *German Law Journal*, 09 (09), 1109–1124.
- Vutt, A., (2008). Subordination of shareholder loans in Estonian law. *Juridica International*, (XV), 86–93.
- Ühinguõiguse revisjoni lähteülesanne (Terms of reference for the revision of company law). (2016). Available in Estonian at: <[https://www.just.ee/sites/www.just.ee/files/uhinguoiguse\\_revisjoni\\_lahteulesanne\\_loplik\\_10.5.2016.pdf](https://www.just.ee/sites/www.just.ee/files/uhinguoiguse_revisjoni_lahteulesanne_loplik_10.5.2016.pdf)>.

---

Copyright © 2018 by the author(s) and Mykolas Romeris University  
This work is licensed under the Creative Commons Attribution International License (CC BY).  
<http://creativecommons.org/licenses/by/4.0/>

